



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 445-5580
FAX (916) 323-3387
www.boe.ca.gov

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

August 7, 2002

RE: *Application of Revenue and Taxation Code Section 68 – Request for Opinion Letter*

Dear Mr. ,

This is in reply to your letter of June 3, 2002 addressed to the Honorable Claude Parrish in which you request our staff legal opinion concerning the application of Revenue and Taxation Code section 68 to the specific circumstances of a public entity's acquisition of your client's property. Each of the questions posed in your letter is restated or paraphrased below followed by our responses.

Facts Presented

A public entity acquired property from the taxpayer. The property taken had been leased to an automobile dealership and included land and improvements. The purchase price of the property taken was \$10.5 million. The property had an adjusted base year value of \$4.7 million allocated as \$2 million for the land and \$2.7 million for the improvements. The property was zoned industrial.

Question 1. After the acquisition, the taxpayer built improvements on land that it had owned prior to the acquisition. You ask whether the improvements may qualify as replacement property.

Response: Yes. As you indicate, the land does not qualify as replacement property pursuant to Property Tax Rule 462.500, the regulation that interprets and implements section 68, because it was acquired prior to the earliest of the acquisition event dates provided in subsection (g)(3) of the rule.

Subsection (g)(3) provides that

Replacement property shall be eligible for property tax relief under this section if it is acquired after March 1, 1975, and if it is acquired on or after the earliest of the following dates:

- A. The date the initial written offer is made for the replaced property by the acquiring entity;
- B. The date the acquiring entity takes final action to approve a project which results in an offer for or the acquisition of the replaced property; or
- C. The date, as declared by the court, that the replaced property was taken.

Despite the ineligibility of the land, the improvements built on that land as replacement improvements would qualify for the base year value transfer if they were built on or after the earliest of those dates and provided that they meet the requirements of comparability and ownership.

Subsection (f) of Rule 462.500 provides that

any new construction required to make replacement property comparable to the property taken shall, to that extent, be eligible for property tax relief . . . if [such new construction] is completed on or after the earliest of the dates listed in subdivision (g)(3), and if a timely request is made for assessment relief.

Thus, under subsection (f) newly constructed improvements may qualify for relief even though the land on which they are situated is ineligible.

Question 2. May the base year value of the property taken, consisting of both land and improvements, be transferred to replacement properties that consist solely of improvements?

Response: Possibly. We infer from the Legislature's finding and declaration to section 68 and from the comparability requirement provisions of Rule 462.500 that the base year value of a property taken consisting of land and improvements may be transferred to a replacement property consisting only of improvements. First, section 68 provides generally that taxpayers who purchase property to replace comparable property from which they are displaced may transfer their adjusted base year value from the property taken to the replacement property. The uncoded note to section 68 recites the Legislature's finding and declaration that

it is the intent of the people in enacting subdivision (d) of section 2 of Article XIII A of the California Constitution to permit taxpayers to use the base year value of the property from which the taxpayer was displaced as the base year value of the property acquired.

In this case, the *property from which the taxpayer was displaced* was the land and improvements and the *property acquired* by the taxpayer that is eligible for the base year value transfer is the newly constructed improvements.

With respect to comparability, Rule 462.500, subsection (c) provides that replacement property "shall be deemed comparable to the replaced property if it is similar in size, utility and function." Subsection (c)(1) defines "function" to mean subject to the similar governmental restrictions, such as zoning. Subsection (c)(2) further specifies that similarity in size and utility

means similar use and value. Thus, the replacement improvements qualify for the base year value transfer to the extent that they are subject to the same governmental restrictions, are substantially similar in use to the replaced land and improvements and the full cash value of those improvements does not exceed 120% of the full cash value of the replaced land and improvements.

Question 3. The replacement improvements are located on land that is zoned industrial. The full cash value of the replacement improvements does not exceed 120% of the purchase price of the property taken. Does the replacement property meet the size, utility and function tests of comparability required by section 68?

Response: Possibly. From the facts provided, the replacement property meets the function and size tests and it may meet the utility test. As stated above, subsection (c)(1) provides that “[p]roperty is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.” Your facts state that the replaced property and the replacement property are both zoned for industrial use.

As to size and utility, subsection (c)(2) provides that replacement property meets the size and utility test

to the extent that [it] is, or is intended to be, used in the same manner as the property taken (i.e., single-family residential and duplex, multi-family residential other than duplexes, commercial, industrial, agricultural, vacant, etc.) and its full cash value does not exceed 120 percent of the award or purchase price paid for the replaced property.

Your facts state that the full cash value of the replacement improvements does not exceed 120 percent of the purchase price of the property taken. Thus, the replacement property meets the size test and will qualify if it is determined that it meets the utility test, i.e., is used in the same manner as the property taken. If the replacement property, or some portion thereof, is not used in the same manner as the property taken then, to that extent, it is not considered to have similar utility and undergoes a change in ownership. Property Tax Rule 462.500, subsections (c)(2)(A) and (c)(3). (See also Annotation No. 200.0345, attached.)

Question 4. Replacement improvements have been made on two or more different sites. The taxpayer intends to transfer portions of the base year value of the property taken to multiple replacement properties. Does the 120% of the purchase price requirement apply to the aggregated full cash value of multiple properties acquired as replacement properties?

Response: Yes. Neither section 68 nor Rule 462.500 limits the availability of relief to a single replacement property. Rule 462.500, subsection (a) provides, in part, that “the term ‘change in ownership’ shall not include the acquisition of comparable real property as replacement for property taken . . .” The provisions of subsection (c) of that rule define comparability in terms of size, utility and function but do not limit the number of the appraisal units that may constitute comparable property.

August 7, 2002
Page 4

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

Lou Ambrose
Supervising Tax Counsel

LA:tr
prop/rec/transbyv/02/07lou

Attachment [Annotation No. 200.0345]

cc: Mr. David Gau, MIC:63
Chief - PPSD, MIC:64
Ms. Jennifer Willis, MIC:70